

M e m o r a n d u m

710.0002

To: Mr. Doug Peter (MIC:27)
Local Tax Section

Date: October 17, 1995

From: John L. Waid
Senior Tax Counsel

Subject: SY EA XX-XXXXXX
Allocation of Local Sales Tax Revenues Derived
from Sales by Distributors

I am answering your memoranda to me dated May 15 and August 24, 1995. You indicate that the taxpayer sells its products through distributors who are not its own employees and who may or may not handle other product lines. We assume the taxpayer is not a 6015 retailer. You ask if the taxpayer is allocating local sales tax correctly.

According to your memoranda, the distributors have a geographic area assigned to them. They call on existing and prospective customers, take orders for the products, and forward the orders to the taxpayer's manufacturing facility located in C---. Customers may send a few orders directly to the factory or process them through the administrative offices located in T---, but the distributors still get commissions on these sales. Distributors may negotiate prices with the customers. Both the distributors and the taxpayer advertise the products. The taxpayer handles all billing and collections. It allocates all local sales tax revenue to the C--- location. We assume that the "distributors" are true agents and are not buying and selling on their own account. We also assume that when you say some orders are "processed" through the T--- location, you mean that orders sent there are merely forwarded on to the C--- location with no sales contact with the customer otherwise taking place.

OPINION

As you know, local sales tax is allocated to the place of sale. (§ 7205. Unless otherwise stated, all subsequent statutory citations are to the Revenue and Taxation Code.) When a retailer has more than one place of business, local sales tax is allocated as follows:

“If a retailer has more than one place of business in this state which participate in the sale, the sale occurs at the place of business where the principle negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, approval or credit, shipment, or billing. For the purposes of this regulation, an employee's activities will be attributed to the place of business out of which he or she works.”

(Reg. 1802(a)(2).)

Regulation 1699(d) discusses the need for agents to obtain permits as follows:

“If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a permit.”

Regulation 1802(a)(2) specifically refers to “employees.” When that is compared to Regulation 1699(e), it is clear that allocation of local tax revenues on sales by independent sales agents must be treated differently, at least where the agent goes to the customer's place of business rather than the other way around. (See, e.g., Reg. 1699(a).) We are of the opinion that Regulation 1802(a)(2) cannot be read to require a sales agent such as we have here to obtain a seller's permit when under Regulation 1699(e) he does not have to get one.

Here, the taxpayer does have a permit. Because the sales agents visit the customers at their places of business, Regulation 1699(e) controls. We thus conclude that the taxpayer is reporting local tax properly to its place of business in C---.

JLW:sr

cc: Mr. Glenn A. Bystrom (MIC:43)
Ms. Judy A. Agan (MIC:69)
Ms. Joan Albu (MIC:32)
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